IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 858 OF 2006
IN
NOTICE OF MOTION NO. 3881 OF 2006
IN
SUIT NO. 3093 OF 2006

1. Mr. S.C. Pakrashi & 3 ors.] .. Appellants (Ori.Defendants)

Versus

1. Balkrishna S. Salehittal & Anr.] .. Respondents (Ori.Pltff. & Def No.4)

Mr. P.K. Samdani, senior counsel i/b Mr. Vishal Khanavkar & Mr. Kedar Dighe for the appellants.

Mr. D.D. Madon, senior counsel with Mr. Jay Choksi i/b M/s. S.C. Naidu & Co. for the respondent No.1.

Ms. Soma Singh i/b Mr. A.K. Rao for respondent No.2.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 04TH DECEMBER, 2006

P.C. :

. We heard the senior counsel for the parties. The Appeal being from the ad-interim order, we dispose of the same at this stage.

2. By the impugned order, the learned Motion Judge, pending Notice of Motion, granted the following

ad-interim order in favour of the plaintiff:

> "(a) That the defendant nos.1,2, 3 and 5 be directed to remove the lock placed by them on the grill door in front of the emergency exit of the suit terrace and hand over peaceful and vacant possession of the suit terrace to the plaintiff for his exclusive use and enjoyment on terms as Hon'ble Court may deem fit and proper.
>
> (b) .....
>
> (c) That pending the hearing and final disposal of this Suit, the Defendant No.1,2,3 and 5 their agents, survivors and/or any person claiming for and on behalf of them or any of the residents (except the plaintiff) of the building with whom Defendants 1, 2, 3 forming an alliance be restrained by an order of injunction from entering into, using, or in any manner dealing with the Suit terrace and in particular from letting out or hiring or permitting use of the said terrace for any function, party, gathering and/or assembling on the Suit terrace;"

3. The question that needs to be decided by us is whether the ad-interim order granted by the learned Motion Judge deserves interference in the Appeal.

4. The respondent No.1 (original plaintiff) in the Suit filed under Section 6 of the Specific Relief Act against the present appellants (defendants No.1, 2, 3 and 5) set up the case that they purchased the flat vide registered agreement dated 1st April, 2004, being flat No.2402 on the 24th floor of the building known as Lokhandwala Residency Towers, "A" Wing, along with the

terrace admeasuring 710 square feet for a consideration of Rs.40,00,000/- from the defendant No.4. The plaintiff was put in possession of the flat, terrace etc. on that very date. However, he was illegally dispossessed from the terrace on 2nd March, 2006, by defendants No.1, 2 and 3 without following due process of law, *inter alia*, necessitating the Suit under Section 6 of the Specific Relief Act.

5. A Notice of Motion was taken out by the plaintiff for interim relief, amongst others, in the nature of prayer clauses (a) and (c) aforenoticed.

6. In opposition to the Notice of Motion, the defendant No.5 filed reply Affidavit and set up the case that the terrace belongs to the entire body of flat purchasers and that at the instance of the flat purchasers (the residents of the society), SRA handed over possession of the terrace to the Society.

7. Since the Appeal arises from ad-interim order, we do not intend to go into the diverse aspects of the case at length, however, at this stage we find that from the letter dated 29th December, 2005, sent by defendant No.4 to the Senior Inspector of Police, Worli Police Station, Mumbai, it is seen that the terrace door lock

was broken open before that date and a notice was pasted that the property (terrace) belongs to flat owners and trespassers will be prosecuted. The Senior Inspector of Police was requested to register the crime of house breaking against the defendants No.2 and 3 (appellants No.2 and 3) suspected to have committed the crime. The said letter casts serious doubt about the correctness of the case set up by the plaintiff that he was dispossessed on 2nd March, 2006. *Prima facie,* it appears that the dispossession took place in the month of December, 2005. If that be so, the present Suit filed by the plaintiff on 2nd September, 2006, under Section 6 of the Specific Relief Act, *prima facie*, appears to be not legally sustainable as such Suit is required to be filed before the expiry of six months from the date of dispossession. In this view of the matter, the impugned order in terms of prayer clauses (a) and (c) of the Notice of Motion does not appear to be justified and is set aside accordingly.

8. We are informed by the senior counsel for the plaintiff that keys of the lock put up on the terrace door have been handed over by the appellants' Advocate to the Advocate for plaintiff. We direct the plaintiff's Advocate to return the keys to the Advocate for the appellants for handing it over to the Secretary

of defendant No.5-Society. We further direct that until the disposal of the Notice of Motion, the defendant No.5 nor its Members shall use the subject terrace nor the said terrace shall be given to any third party on licence or otherwise.

9. Hearing of the Notice of Motion is expedited.

. Appeal stands disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]